

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Philip G. Reinhard	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	01 C 50441	DATE	8/14/2002
CASE TITLE	CAMPA vs. GORDON		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] For the reasons stated on the reverse Memorandum Opinion and Order, Count III of the third party complaint is dismissed with prejudice.

Philip G. Reinhard

- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials	<div style="text-align: center;"> <p>U.S. DISTRICT COURT</p> <p>CLERK</p> <p>02 AUG 14 PM 2:54</p> <p>FILED - MD</p> </div>	number of notices	Document Number <i>22</i>
			AUG 14 2002 date docketed	
			<i>[Signature]</i> docketing deputy initials	
			8-14-02 date mailed notice	
			<i>[Signature]</i> mailing deputy initials	
/SEC		Date/time received in central Clerk's Office		

MEMORANDUM OPINION AND ORDER

Plaintiff, Felipe R. Campa, a passenger in a vehicle driven by Christopher Sparacino, filed suit against Gordon Food Services, Inc. ("GFS"), for personal injuries sustained in an accident with a semi tractor-trailer driven by Steven Crowe, an employee of GFS. GFS, filed a three-count third-party complaint against Christopher Sparacino and Lasercare Services, Inc., seeking contribution. GFS, alleges claims based on negligence (Count I), *respondeat superior* (Count II), and negligent entrustment (Count III).¹ Third-party defendants, Christopher Sparacino and Lasercare Services, Inc., have moved to dismiss Count III of third-party plaintiff's complaint under Rule 12(b)(6). As GFS is incorporated in Michigan with its principal place of business in Michigan and Felipe R. Campa is an Illinois resident, and the amount in controversy is alleged to exceed \$75,000, diversity jurisdiction is proper under 28 U.S.C. § 1332. Venue is proper under 28 U.S.C. § 1391(a)(2).

In Illinois, a negligent entrustment claim is duplicative where the employer has admitted liability for the actions of the employee in a *respondeat superior* claim. Neff v. Davenport Packing Co., 268 N.E.2d 574, 575 (Ill. App. Ct. 1971). Because of the potential admission of inflammatory evidence irrelevant to the negligence action, Illinois courts have reasoned that a negligent entrustment claim must be dismissed where the employer admits the employee was acting within the scope of his employment. Ledesma v. Cannonball, Inc., 538 N.E.2d 655, 661 (Ill. App. Ct. 1989). Sparacino and Lasercare argue that this rule is applicable because Lasercare has admitted Sparacino was acting within the scope of his employment. GFS disagrees, arguing that the rule under Neff and Ledesma is no longer viable because Illinois has adopted comparative negligence.

The fault of the employer for negligent entrustment, in a comparative negligence jurisdiction, is still derived from the negligence of the employee, therefore, additional liability cannot be imposed on the employer where the employer has already admitted it is liable for 100% of the fault attributable to the negligent employee. Gant v. L.U. Transp., Inc., 770 N.E.2d 1155, 1159 (Ill. App. Ct. 2002). "The liability of the employer is fixed by the amount of liability of the employee." Id. at 1160. *Respondeat superior* and negligent entrustment are "simply alternative theories by which to impute an employee's negligence to an employer." Id. Thus, even under comparative negligence the two claims are still duplicative where the employer admits liability for the actions of the employee.

While, two cases in this district, decided before Gant, have ruled otherwise, see Lorio v. Cartwright, 768 F. Supp. 658, 660 (N.D. Ill 1991); Tapia v. Richardson, No. 96 C 5759, 1998 WL 164819, *2 (N.D. Ill. 1998), "in the absence of prevailing authority from the state's highest court, federal courts ought to give great weight to the holdings of the state's intermediate appellate courts and ought to deviate from those holdings only when there are persuasive indications that the highest court of the state would decide the case differently from the decision of the intermediate appellate court." Allstate Ins. Co. v. Menards, Inc., 285 F.3d 630, 637 (7th Cir. 2002). Applying Gant, the court finds that Count III of the third-party complaint must be dismissed because third-party defendants have admitted that Sparacino was acting within the scope of his employment when the accident occurred, thereby admitting that they are strictly liable for the employee's negligence if he is found negligent.

For the foregoing reasons Count III of the third party complaint is dismissed with prejudice.

¹ In the third-party complaint Count III is titled "negligence" and not negligent entrustment; however, the pleadings set out a negligent entrustment claim. See Ledesma v. Cannonball, 538 N.E.2d 655, 661 (Ill. App. Ct. 1989). Furthermore, GFS, states that Count III is negligent entrustment. (Resp. to Mot. to Dismiss 1-2).